



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY - REGION II

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

OCT - 4 1985

GENERAL NOTICE LETTER

URGENT LEGAL MATTER

EXPRESS MAIL - RETURN RECEIPT REQUESTED

Mr. John G. Breen, Chairman of the Board
The Sherwin-Williams Company
101 Prospect Avenue, N.W.
Cleveland, Ohio 44115-1075

Re: Diamond Alkali Superfund Site
Notice of Potential Liability for
Response actions in the Passaic River Study Area

Dear Mr. Breen:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release and/or threatened release of hazardous substances, pollutants, and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §9601 et seq.

EPA has documented the release or threatened release of hazardous substances, pollutants and contaminants to the Passaic River Study Area which is a part of the Diamond Alkali Superfund Site ("Site"). By this letter EPA is notifying The Sherwin-Williams Company ("Sherwin-Williams") of its potential liability relating to the Site pursuant to Section 107 of CERCLA.

Sediment in the Passaic River contains numerous hazardous substances, pollutants and contaminants. Investigations undertaken by EPA indicate that hazardous materials were being released from the Sherwin-Williams facility at 60 Lister Avenue in Newark, New Jersey, into the Passaic River Study Area. Hazardous substances, pollutants and contaminants released from the Sherwin-Williams facility into the Passaic River Study Area present a risk to the environment and the humans who may ingest contaminated fish and shellfish. Therefore, Sherwin-Williams may be potentially liable for all response costs which the government may incur relating to the Passaic River Study Area.

Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §9606(a) and §9607(a) and other laws, potentially responsible parties ("PRPs") may be obligated to implement response actions deemed

844160001

Printed on Recycled Paper

necessary by EPA to protect human health, welfare or the environment, and may be liable for all costs incurred by the government in responding to any release or threatened release at the Site. If response actions are performed by EPA rather than by the PRPs, those PRPs may be subject to legal action pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), to recover public funds expended by EPA in response to the release and threatened release of hazardous materials at the Site. Such actions and costs may include, but need not be limited to, expenditures for conducting a Remedial Investigation/Feasibility Study ("RI/FS"), a Remedial Design/Remedial Action, and other investigation, planning, response, oversight, and enforcement activities. In addition, responsible parties may be required to pay damages for injury to, destruction of, or loss of natural resources, including the cost of assessing such damages.

While EPA has the discretionary authority to invoke special notice procedures, EPA hereby notifies you that it will not utilize the special notice procedures contained in Section 122(e) of CERCLA, 42 U.S.C. §9622(e). EPA has concluded that use of the special notice procedures in Section 122(e) of CERCLA would delay the implementation of the RI/FS which is currently being performed at the Site to determine the extent of contamination and to evaluate possible actions to mitigate any adverse effects. EPA will determine at a subsequent time whether additional measures are required to mitigate releases from the Site in order to protect the public health, welfare, and the environment. The decision not to use the special notice procedures does not preclude you from entering into discussions with EPA regarding your participation in activities at the Site.

By this letter, EPA encourages you, as a PRP, to voluntarily participate in the EPA-approved activities underway at the Site in conjunction with other PRPs. At the present time, the Occidental Chemical Corporation ("OCC") is performing an RI/FS at the Site under an Administrative Consent Order. OCC, through its successor, Maxus Energy Corporation, can be contacted at the addresses listed in the Attachment to this letter. Be advised that notice of your potential liability at the Site is being forwarded to OCC by EPA.

EPA requests your cooperation in this matter. If you are interested in participating in the ongoing response action you should notify EPA of your intentions to join with OCC. Notification should be in writing and should be delivered to EPA no later than fourteen (14) days after the date that you receive this letter. Your letter should be sent to:


Lance R. Richman, P.G.
U.S. Environmental Protection Agency
Emergency and Remedial Response Division
290 Broadway, Floor 19
New York, NY 10007-1866,

with a copy to Ms. Amelia Wagner, Esq., of the Office of Regional Counsel at the same address.

If EPA does not receive a written response from you in the time specified above, EPA will assume that you voluntarily decline to participate in any of the response actions taking place at the Site. EPA reserves the right to pursue its available enforcement options with regard to the Site.

If you wish to discuss this matter further, please contact Mr. Lance R. Richman, P.G., of my staff at (212) 637-4409 or Ms. Wagner at (212) 637-3141. Please note that all communications from attorneys should be directed to Ms. Wagner.

Sincerely yours,


Kathleen Callahan, Director
Emergency and Remedial Response Division

Attachments

CC: Mr. Donald J. McConnell, Esq.
Counsel for The Sherwin-Williams Company

Ms. Carol Dinkins, Esq.
Vinson & Elkins, L.L.P.

Mr. Richard P. McNutt
Maxus Energy Corporation

ATTACHMENT

Contact for Maxus Energy Corporation:

Mr. Richard P. McNutt
Maxus Energy Corporation
1015 Belleville Turnpike
Kearny, New Jersey 07032

Counsel: Ms. Carol Dinkins, Esq.
Vinson & Elkins, L.L.P.
3700 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201-2916

PRPs in receipt of Notice Letters:

Mr. J. Roger Hirl
President and Chairman of the Board
Occidental Chemical Company
Occidental Tower
5005 LBJ Freeway
Dallas, Texas 75244

Brian C. Kelly, Esq.
Chris-Craft Industries, Inc.
600 Madison Avenue
New York, New York 10022

Counsel: Peter Simshauser, Esq.
Skadden, Arps, Slate, Meagher & Flom
300 South Grand Avenue
Los Angeles, California 90071-3144

Mr. Edgar S. Woolard, Jr., Chairman
E.I. du Pont de Nemours and Company
1007 Market Street
Wilmington, Delaware 19898

Mr. Robert D. McNeeley, President
Reilly Industries, Inc.
1510 Market Square Center
151 North Delaware Street
Indianapolis, IN 46204